

8 UNITED STATES DISTRICT COURT  
9 DISTRICT OF NEVADA

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 WALKER RIVER PAIUTE TRIBE,  
13 Plaintiff-Intervenor,

14 vs.

15 WALKER RIVER IRRIGATION DISTRICT,  
16 a corporation, et al.,

Defendants.

17  
18 UNITED STATES OF AMERICA,  
19 WALKER RIVER PAIUTE TRIBE,

20 Counterclaimants,

21 v.

22 WALKER RIVER IRRIGATION DISTRICT,  
23 et al.,

Counterdefendants.

24 The enormity and complexity of the issues pending with  
25 respect to the First Amended counterclaims filed by the United  
26 States and the Walker River Paiute Tribe certainly suggest that

In Equity No. C-125-ECR  
Subfile No. C-125-B

**CASE MANAGEMENT ORDER**

1 some sort of bifurcation would be helpful in processing the action.  
2 Any such bifurcation may involve some duplication of work in  
3 relation to subsequent phases of the case. There does not seem to  
4 be any way to entirely avoid duplication, but we should endeavor to  
5 do so to the extent that we can. Another major concern is whether  
6 persons litigating in later phases of the case may find themselves  
7 prejudiced by being bound by decisions and adjudications in earlier  
8 phases where they did not participate. This, too, we should  
9 endeavor to avoid.

10 Without bifurcation of some sort, the case may simply be  
11 too big and too complex to process on a reasonable basis.

12 Having determined that some sort of bifurcation is  
13 desirable and necessary, we conclude that, in general terms, the  
14 proposal of the U.S./Tribe to bifurcate the "Tribal Claims" is as  
15 good and logical a basis for dividing the case as has been  
16 suggested or can be devised.

17 While many of the defenses to the claims of the  
18 U.S./Tribe claims for the Walker River Paiute Indian Reservation  
19 may be the same or similar to the defenses that may be offered with  
20 respect to the remaining claims of the U.S. for other Indian  
21 reservations and lands and federal enclaves and federal lands, each  
22 of the remaining claims appears to require development of a  
23 distinctly different factual scenario, as well as specific legal  
24 basis. This presents one good reason to bifurcate as suggested by  
25 the U.S./Tribe. Exactly how the defenses which overlap the claims  
26 for the Walker River Paiute Indian Reservation will play out as to

1 each of the other separate claims is uncertain and adds  
2 justification for the proposed bifurcation.

3 In the order that follows, we have expanded the  
4 categories of water rights holders to be served with process  
5 somewhat beyond the categories suggested by the U.S./Tribe in their  
6 proposed case management order, but have not included all such  
7 categories as have been suggested by the Walker River Irrigation  
8 District and States of Nevada and California.

9 The categories to be served with process may be subject  
10 to adjustment and modification by order of the Magistrate Judge as  
11 he may find to be appropriate. However, we note that we have  
12 limited domestic users to be served with process to those whom, it  
13 appears, might be affected by pumping of underground water on the  
14 Walker River Paiute Indian Reservation. If it is shown that other  
15 domestic users could be affected by such pumping or that the  
16 underground and surface water constitute a single hydrological  
17 system where an earlier priority for the tribe for surface or  
18 underground waters could affect the rights of other domestic users,  
19 the Magistrate Judge should make an order expanding the category of  
20 domestic users who are required to be served with process.

21 We have also expanded the categories of water rights  
22 holders who have permits to pump groundwater issued by the State of  
23 Nevada and who are required to be served with process to additional  
24 Sub Basins in Nevada. This has been done because of the claim that  
25 underground and surface waters constitute a single source.  
26

1           These additional categories are also subject to  
2 modification by the Magistrate Judge on the same basis as noted  
3 above.

4           With the conclusion that the Tribal claims should be  
5 bifurcated in mind, we then endeavor to devise a case management  
6 order to provide for such bifurcation, taking into account the  
7 companion considerations noted above.

8           **IT IS, THEREFORE, HEREBY ORDERED** that:

9           (1) The claims of the Tribe contained in the First  
10 Amended Counterclaim of the Tribe and the claims of the U.S. on  
11 behalf of the Tribe (First, Second, and Third Claims for Relief)  
12 set forth in the First Amended Counterclaim of the U.S. are hereby  
13 bifurcated from all other claims raised by the U.S. in its  
14 pleading. The bifurcated claims are sometimes referred to herein  
15 as the "Tribal Claims." Reference to the U.S./Tribe below refers  
16 separately to the United States and its said claims, set forth in  
17 its First Amended Counterclaim in behalf of the Tribe and to the  
18 Walker River Paiute Tribe and its claims set forth in its First  
19 Amended counterclaim.

20           (2) The Tribal Claims shall proceed as described in this  
21 Case Management Order. All discovery and all other proceedings in  
22 this action included in or in connection with the said First  
23 Amended Counterclaims are stayed, until the further order of the  
24 court, and except as provided in this order.

25           **SERVICE OF PROCESS AND FILING OF LIS PENDENS**

1 (3) Prior to the resolution of the Threshold issues  
2 identified below, the U.S./Tribe shall effect service of their  
3 respective First Amended Counterclaims, notices in lieu of summons,  
4 requests for waiver of service, and the within Case Management  
5 Order on all of the members of the categories of water rights  
6 holders described below. Each of the members of each said category  
7 shall be named as a Counterdefendant in this case.

8 (a) The successors in interest to all water rights  
9 holders under the Decree (April 14, 1936), modified, Order for  
10 Entry of Amended Final Decree to Conform to Writ of Mandate,  
11 Etc. (April 24, 1940) ("1936" Decree).

12 (b) All holders of surface water rights under the laws  
13 of the States of Nevada and California in the Walker River  
14 Basis who are not presently parties to this adjudication.

15 (c) All holders of permits or certificates to pump  
16 groundwater issued by the State of Nevada and domestic users  
17 of groundwater within Sub Basins 107 (Smith Valley), 108  
18 (Mason Valley), 110A (Schurz Subarea of the Walker Lake  
19 Valley), and 110B (Walker Lake Subarea of the Walker Lake  
20 Valley).

21 (d) All holders of permits or certificates to pump  
22 groundwater issued by the State of Nevada within Sub Basins  
23 106 (Antelope Valley), 109 (East Walker), and 110C (Whiskey  
24 Flat-Hawthorne Subarea of Walker Lake Groundwater Basin).

25 (e) All users of groundwater for irrigation in  
26 California.

1 (f) All holders of "vested rights" to the use of  
2 groundwater under the laws of the State of Nevada within the  
3 Walker River Basin.

4 (g) All municipal providers in Nevada within the Walker  
5 River Basin who currently use groundwater.

6 (h) All municipal providers in California within the  
7 Walker River Basin who currently use groundwater.

8 (i) All industrial users in Nevada within the Walker  
9 River Basin who currently use groundwater.

10 (4) Subject to the requirements of this order, within 60  
11 days of entry of this Case Management Order the parties shall file  
12 an agreed-upon Notice in Lieu of Summons for the Tribal Claims and  
13 agreement upon procedures for recording Lis Pendens to the  
14 Magistrate Judge for his consideration and approval. To the extent  
15 the parties cannot agree on any of these issues they shall, within  
16 said period of time, file their own proposals regarding such issues  
17 for consideration and decision by the Magistrate Judge. Procedures  
18 for recording of Notices of Lis Pendens will be determined by the  
19 Magistrate Judge by order.

20 (5) To the extent the U.S. and the Tribe cannot effect  
21 service or obtain a waiver of service from all the individual  
22 members of the categories of water rights holders and users listed  
23 above, and all other claimants to surface and groundwater rights  
24 not identified or who are unknown, the U.S./Tribe may move for  
25 publication of summons consistent with Fed. R. Civ. P. 4 and the  
26 laws and rules applicable for Nevada and California respectively to

1 the extent they are to be used according to Fed. R. Civ. P. 4. The  
2 Magistrate Judge shall consider any such motion and rule on the  
3 same so as to grant or deny such motion for publication in whole or  
4 in part.

5 (6) The Magistrate Judge shall establish a schedule for  
6 completion of service of process which may be modified by further  
7 order from time to time as appropriate.

8 The Magistrate Judge is authorized to consider and decide  
9 all issues which may arise pertaining to service of process.

10 (7) The Magistrate Judge shall conduct all necessary  
11 proceedings and shall decide how the information shall be obtained  
12 by the U.S./Tribe to enable them to identify the individuals and  
13 entities with claims to surface water and/or groundwater in the  
14 Walker River Basin who are the appropriate counterdefendants to the  
15 U.S./Tribe said counterclaims. The Magistrate Judge shall  
16 determine the responsibilities of the respective parties to provide  
17 such information and at whose cost. Such information may be  
18 ordered obtained through orders devised by the court or discovery  
19 or other processes, so that the litigation may proceed in a  
20 reasonable manner.

21 In this connection, the Magistrate Judge shall also  
22 consider and determine how, when, and at whose cost information  
23 regarding changes or modification in the individuals or entities  
24 with such water rights claims shall be provided as between the  
25 parties and the entities which receive information respecting any  
26

1 such changes, until service of process is complete on the  
2 counterclaims.

3 (8) The U.S./Tribe may seek costs of service pursuant to  
4 the requirement of Fed. R. Civ. P. 4(d) during their service  
5 efforts under this Case Management Order.

6 (9) After the U.S./Tribe have received the information  
7 and compiled the list of parties whom they intend to serve, that  
8 list and a description of the procedures by which it was compiled  
9 shall be filed and provided to the parties who shall have such  
10 period of time as the Magistrate Judge shall determine to file  
11 objections indicating whether the list is complete and includes all  
12 such water rights claimants within the categories described in  
13 paragraph (3) above who can reasonably be identified. The  
14 Magistrate Judge shall consider and rule on all such objections.  
15 Corrections to the list of intended parties may be made during the  
16 period of the service of process upon appropriate notice and  
17 approval of the Magistrate Judge.

18 **Scheduling, Case Management**

19 (10) Following completion of service of process on the  
20 said counterclaims, the Magistrate Judge shall receive  
21 recommendations of the parties for procedures for scheduling and  
22 for the efficient management of the litigation given the number of  
23 parties to the case. Such procedures may include the use of common  
24 counsel, special procedures for service of pleadings, or any other  
25 mechanisms deemed likely to reduce the burdens on the parties and  
26 the court in a case of this magnitude. The Magistrate Judge shall



1 consider and make all appropriate rulings with respect to these  
2 matters.

3 Threshold Issues Relative to Tribal Claims

4 (11) As soon as convenient after the entry of this order,  
5 and upon appropriate notice to the parties presently appearing in  
6 the case, the Magistrate Judge shall consider and make a  
7 preliminary determination of the threshold issues to be addressed  
8 at the outset of the litigation on the U.S./Tribe said  
9 counterclaims. Scheduling of such consideration shall go forward  
10 notwithstanding other proceedings provided for in this order. The  
11 list of threshold issues regarding said claims will not be finally  
12 resolved and settled by the Magistrate Judge until all appropriate  
13 parties are joined. Nevertheless, the parties are directed to  
14 identify all potential threshold issues promptly and to submit them  
15 to the Magistrate Judge for consideration, as he shall direct, so  
16 that action may proceed as promptly as possible upon conclusion of  
17 service of process. In general, threshold issues, among others,  
18 shall address jurisdiction, claim, preclusion, applicable law,  
19 equitable and other defenses which may be raised by any party.

20 Among others, the Magistrate Judge shall consider  
21 inclusion in the list of threshold issues to the resolution of the  
22 said Tribal Claims to be addressed at the outset of the litigation:

23 (a) Whether this court has jurisdiction to adjudicate  
24 the said Tribal Claims. If so, to what extent should the  
25 court exercise its jurisdiction in these matters. In this  
26 connection, what is the scope of this court's subject matter

1 jurisdiction to adjudicate the Tribal Claims to groundwater,  
2 as well as to additional surface waters?

3 (b) Does federal law govern the pumping of groundwater  
4 on the Walker Lake Paiute Indian Reservation by the Tribe or  
5 the U.S. on its behalf?

6 (c) If the Tribe has the right to pump groundwater under  
7 federal law, are such rights, as a matter of federal law,  
8 subject to different protections than those provided by State  
9 law?

10 (d) Whether the court has jurisdiction over groundwater  
11 used pursuant to State law outside the exterior boundaries of  
12 the Walker River Paiute Indian Reservation if such use  
13 interferes with the Tribe's rights under federal law to use  
14 water from the Walker River system. If so, should the court  
15 exercise that jurisdiction?

16 (e) Whether equitable defenses bar some or all of the  
17 said Tribal Claims. Within such time as shall be fixed by the  
18 Magistrate Judge the parties now or hereafter appearing in the  
19 case shall file for consideration by the Magistrate Judge a  
20 statement as to any defenses or issues they intend to assert.

21  
22 (f) Whether, regardless of the extent of hydrologic  
23 connection between surface and groundwater, this court is  
24 required to accept the distinction drawn between surface water  
25 rights and groundwater rights provided by California and  
26 Nevada law.

1 (g) Are the holders of surface water rights established  
2 under federal law entitled to protection from the use of  
3 groundwater beyond the protection provided to holders of  
4 surface water rights established under state law.

5 (h) If the only jurisdiction of this court with respect  
6 to groundwater issues is to protect surface water rights  
7 established under federal law from interference by junior  
8 groundwater users, must the issues of interference be decided  
9 as a part of the adjudication of federal surface water claims.

10 **Phasing of Proceedings**

11 (12) Pretrial proceedings in this case with respect to  
12 the Tribal Claims shall be conducted in multiple phases as follows:

13  
14 (a) **Phase I** of the proceedings shall consist of the  
15 threshold issues as identified and determined by the  
16 Magistrate Judge.

17 (b) **Phase II** will involve completion and determination  
18 on the merits of all matters relating to the said Tribal  
19 Claims.

20 A Scheduling Order shall be entered by the Magistrate  
21 Judge, in accordance with this order, and such other  
22 appropriate matters as he shall consider necessary to provide  
23 for completion of consideration of Phases I, II, and  
24 subsequent phases in the case.

25 (c) Additional phases of the proceedings shall encompass  
26 all remaining issues in the case. Such phases shall be

1 determined and scheduled by the Magistrate Judge and may, to  
 2 the extent he determines, overlap Phases I and II as  
 3 appropriate. We do anticipate, however, that the additional  
 4 phases will not be scheduled by the Magistrate Judge at least  
 5 until the threshold issues as set forth above have been  
 6 decided on the merits. The additional phases shall include,  
 7 but not be limited to:

8 (a) All other claims, crossclaims, counterclaims,  
 9 defenses and issues raised by the pleadings of the  
 10 parties that are not included in the threshold  
 11 issues.

12 (b) All other issues related to the Tribal Claims.

13 (c) All issues related to the other Federal Claims.

#### 14 Responses to Process

15 (13) The notices in lieu of summons shall notify the  
 16 persons or entities served concerning how and when they must  
 17 respond. They shall be directed to file and serve upon the U.S.,  
 18 the Tribe, the Walker River Irrigation District, the States of  
 19 Nevada and California, within 60 days after completion of service  
 20 of process (or where service is by publication within 60 days after  
 21 the last day of publication of such service), a notice of  
 22 appearance and intent to participate. No Answers or other pleading  
 23 will be required except upon further order of the Magistrate Judge  
 24 entered thereafter. No default shall be taken for failure to  
 25 appear.  
 26

1 (14) Upon completion of Phase I it may be necessary to  
2 join additional parties.

3 Discovery, Motions and Further Proceedings

4 (15) Once the Magistrate Judge has finally determined the  
5 threshold issues, discovery shall be allowed to all parties on the  
6 threshold issues. Discovery shall also be permitted during that  
7 same time period concerning the basis for the Tribal Claims; such  
8 discovery shall be limited to propounding of interrogatories and  
9 requests for production of documents relating to the contentions of  
10 the U.S./Tribe with respect to the basis for the Tribal Claims.

11 The discovery provided for in this paragraph (15) shall  
12 be conducted for such period and according to such terms,  
13 conditions, modifications and extensions to this order as shall be  
14 determined to be appropriate by the Magistrate Judge.

15 As provided above, all other discovery is stayed.

16 (16) Motions which may be dispositive or partially  
17 dispositive of any threshold issue shall be deferred until  
18 completion of discovery as permitted by this order and shall be  
19 filed thereafter within such time period and schedules for answers  
20 and replies as shall be determined by the Magistrate Judge. Such  
21 dispositive motions, however, will be decided by the undersigned  
22 judge.

23 (17) To the extent the threshold issues are not resolved  
24 by motions, an evidentiary hearing shall be held before the  
25 undersigned judge at such time and according to such conditions  
26

1 (including, as appropriate, the filing of joint prehearing orders  
2 as shall be determined by the Magistrate Judge.

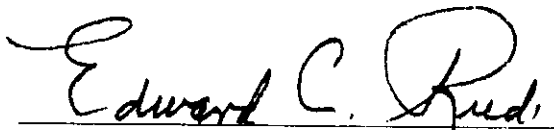
3 (18) If a party wishes to perpetuate testimony relevant  
4 to this matter, that party shall comply with Fed. R. Civ. P. 27 and  
5 any applicable Local Rule. The Magistrate Judge will consider and  
6 determine all issues pertaining to perpetuation of testimony.

7 (19) Any party may move for modification of this Case  
8 Management Order for good cause shown. The Magistrate Judge shall  
9 have authority to change, modify and adjust this order. The  
10 Magistrate Judge shall hold regular periodic status conferences at  
11 times he shall determine, so that he and the parties may be advised  
12 as to the progress of the case and problems encountered, so that  
13 appropriate changes, modifications, and adjustments may be made in  
14 this order and such problems addressed.

15 **IT IS FURTHER ORDERED** that the Joint Motion For Leave to  
16 Serve First Amended Counterclaim filed by U.S./Tribe (#62) is  
17 **GRANTED** on the basis and to the extent set forth in this order.

18 The motions (#67), (#90), (#96), and (#98) are all  
19 considered ruled upon and decided as provided in the within order.

20 DATED: April 18, 2000.

21   
22 UNITED STATES DISTRICT JUDGE